



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-98-078-51396 Office: Vermont Service Center Date:

AUG 15 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

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INSTRUCTIONS:

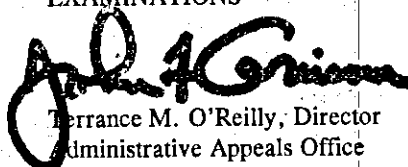
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

The beneficiary is a forty-seven-year-old single female native and citizen of Barbados. The beneficiary entered the United States as a visitor on February 18, 1989 and her authorized period of admission expired on August 18, 1989.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 14, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 14, 1996 to January 14, 1998.

In its letter dated June 23, 1997, the petitioner stated that the beneficiary "has been working as a Bible Instructor since April 1989 until the present." In a separate letter, the petitioner stated that the beneficiary "receives \$220.00 per week." On March 18, 1998, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the beneficiary submitted a personal statement in which she stated that she "started to work for the [redacted] in April 1989." The petitioner submitted photocopies of the beneficiary's 1996 and 1997 federal income tax returns.

On appeal, the petitioner states that the beneficiary "gets paid on cash, [therefore] she is giving to sign a receipt which states that she has received her salary for her work." The petitioner submits photocopies of statements signed by the beneficiary each of which indicated that the beneficiary has "received my weekly salary of \$220.00 in cash from [redacted] Church. For my work as a Bible Instructor." The petitioner has not submitted any independent, corroborative evidence to support its contention that the beneficiary has received a salary for her work at the church. The tax returns are not supported by any documentary evidence (such as Forms W-2). The pay statements submitted on appeal clearly cannot be considered to be contemporary, documentary evidence of the beneficiary's work experience. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, the petitioner has not established that the beneficiary has two years of qualifying religious work experience.

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated June 23, 1997, the petitioner stated that the beneficiary has been:

assisting the minister with all religious services as well as with communion services, dedication of children to God, preaching and teaching the Word of God, home and hospital visitation to provide counseling, religious

orientation and conducting Bible classes to our church members and new believers.

The petitioner submitted a photocopy of a certificate of achievement awarded to the beneficiary. On March 18, 1998, the director requested that the petitioner submit evidence that the prospective occupation is a recognized occupation within the denomination. In response, the petitioner submitted a "Church Manual." According to this document, a Bible Instructor is a "very important line of service."

On appeal, the petitioner reaffirms that the position of Bible instructor is a religious occupation. The petitioner has not established that the beneficiary's prospective occupation is a religious occupation. The petitioner has not submitted any evidence to support its contention that a Bible instructor is a religious occupation. The photocopied pages from the church manual are not sufficient. There is not evidence that the beneficiary was required to undergo any specific religious training or theological education prior to qualifying for the prospective occupation. Further, based on the list of duties provided by the petitioner, it is clear that any dedicated member of the congregation would be capable of working as a Bible instructor. Accordingly, the petitioner has not demonstrated that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner has indicated that it plans to pay the beneficiary an annual salary of \$11,440.00. The petitioner has also claimed to have been paying the beneficiary this salary in the past. The petitioner submitted a photocopy of its 1997 financial statement. According to this statement, in 1997 the only expenses that went toward salaries were for the Minister. The position of Bible instructor was not listed as an expense for the church. As the petitioner has never employed anyone in the prospective position,

it cannot be concluded that this is a valid job offer. It must be noted that this financial statement further undermines the petitioner's claim that it had paid the beneficiary a salary in the past.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.